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UPS Next Day Air

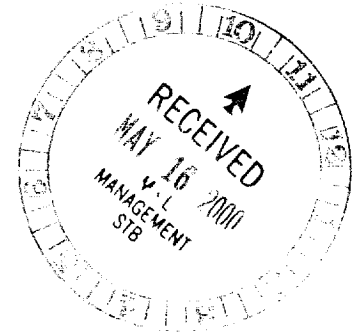
May 15, 2000

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit,
Attn: STB Ex Parte 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, DC 20423-0001

STB
Secretary

MAY 17 2000

U.S. DEPT. OF
Public Record



Re: Major Rail Consolidation Procedures
STB. Ex Parte No. 582 (Sub-No. 1)

Dear Secretary Williams:

Please find enclosed the original and 25 copies of United Transportation Union's Comments for filing in the above-captioned proceeding. Also, in accordance with Board orders we have enclosed a diskette in WordPerfect format.

Thank you for your cooperation.

Sincerely,

Daniel R. Elliott, III
Assistant General Counsel

cc: C. J. Miller, III, General Counsel

**Before the
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 582 (Sub-No. 1)

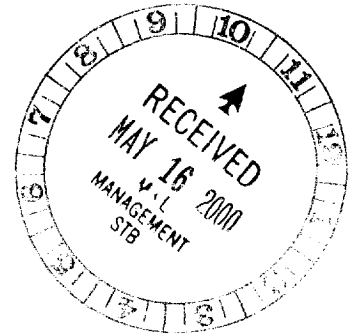
**MAJOR RAIL
CONSOLIDATION PROCEDURES**

**COMMENTS OF
UNITED TRANSPORTATION UNION**

MAILED
Office of the Secretary

MAY 16 2000

Part of
Public Record



The United Transportation Union ("UTU") respectfully submits the following comments pursuant to the Surface Transportation Board's ("STB") March 31, 2000 Order in this proceeding. The STB requested public comments on major rail consolidations and ways in which the present merger regulations should be modified to promote and enhance competition and/or other public interest goals.

In its Order, the STB mentions various issues that relate to rail employees, including safety, service, and cross-border concerns, that have been raised in this proceeding. Also, the STB noted that rail labor parties have discussed the situation regarding "cram down" of post-merger changes in collective-bargaining agreements under the auspices of 49 U.S.C. § 11321(a) and/or § 11326 and /or Article I Section 4 of the *New York Dock* labor protective conditions.

UTU is the largest rail labor organization in the United States. UTU and its members have borne a significant portion of the adverse effects from the major mergers over the years. UTU members have lost many jobs, collective bargaining rights, and have had to face the dangers from added safety problems because of these mergers.

The abrogation of collective bargaining rights by carriers under the guise of procedures in

these mergers has been a serious problem for UTU and its members over the past two decades, and decisions by the Interstate Commerce Commission, STB and the courts during that time have made the problem worse. In response to this problem, UTU recently met with the Class I carriers to negotiate a solution. After much discussion, UTU and the signatory Class I carriers on February 11, 2000, signed Revised Standards for Preemption of Collective-Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act (a copy of same is attached hereto as Exhibit A). The Revised Standards address the "cram down" issues to the satisfaction of UTU. The parties reached their agreement to the Revised Standards by bargaining under the Railway Labor Act, 45 U.S.C. § 151 *et seq.* The parties intend the Revised Procedures to be prescribed by statute in the future and not as conditions imposed and administered by the STB. The parties have also agreed that their agreement is not itself subject to the exemption provision in the Interstate Commerce Act, 49 U.S.C. § 11321(a).

This agreement removes the labor relations issue of collective-bargaining agreement changes after mergers and acquisitions from the control of the STB. This change is in line with decisions which indicate that the STB's predecessor, the Interstate Commerce Commission, did not consider itself a labor relations agency. *See Leavens v. Burlington Northern, Inc.* 384 I.C.C. 962, 975 (1977).

This agreement now frees the STB to administer transportation issues and get out of the labor relations business.

Moreover, UTU wants to stress that re-regulation, as suggested by various parties in this proceeding, is not the solution to the railroad industry's problems. Re-regulation would hurt the railroads' abilities to invest in infrastructure and to continue the provision of present services. Re-regulation would only result in the loss of income to railroads and degradation of service to shippers.

The loss of income to rail carriers would eliminate future growth and cut back on present services. The use of re-regulation in a vain effort to cut rates for shippers would make railroads more fragile. Railroads would then be forced to discontinue carload business and large parts of intermodal business. Plans to build new intermodal facilities would stop. Railroads would not be able to expand capacity. Also, railroads would have to defer maintenance. In addition, railroads would abandon lines that are now profitable. Deferred maintenance and abandonments obviously cause UTU serious concern. Deferred maintenance leads to safety problems, and abandonments cause job losses. In addition, so-called “open access” on rail lines would create safety, job security, and collective bargaining issues for UTU and its members.

Additionally, UTU has concern about cross-border issues which may arise from the control of a large U.S. railroad by a Canadian railroad. This scenario makes UTU wary due to problems with extra-territorial application of U.S. laws in Canada. UTU’s greatest concern is the safety of its members since the Hours of Service Act and other safety laws are not applicable in Canada. Also, UTU is concerned that Canadian railroads may not have sufficient interest in maintenance of the United States rail system. These matters should be carefully examined before more major mergers take place.

While UTU is certainly in favor of a careful evaluation of present regulations to assess whether safety on the merging or acquiring railroads can be improved, new competition regulation is not the answer at this time. UTU supports the STB’s moratorium on major rail mergers because of the present uncertainty in the industry. The rail industry simply needs time to regain the confidence of its customers and to recover from prior mergers which have resulted in service disruptions. Moreover, a major merger at this time would in all likelihood lead to more

consolidation of Class I carriers. This type of massive consolidation would create more service disruptions for shippers and uncertainty for investors. Many alternatives to mergers exist which would be less likely to cause difficulties. Railroads need time to recuperate from prior mergers. More mergers and re-regulation at this time is not the answer.

CONCLUSION

The railroad industry just needs time to recover from prior mergers. Re-regulation would only hurt the industry. Most importantly, United Transportation Union prefers its collective bargaining approach to the “cram down” issue, through its February 11, 2000 agreement with the signatory Class I railroads, to any effort by the Board to address the issue.

Respectfully submitted,

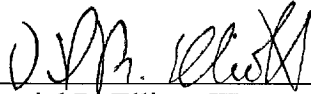
A handwritten signature in dark ink, reading "Clinton J. Miller, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Clinton J. Miller, III
General Counsel
Daniel R. Elliott, III
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue Detroit Avenue
Cleveland, Ohio 44107
(216) 228-9400

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Comments have been served this 15th day of May 2000, via first-class, postage pre-paid mail upon the following:

All Parties of Record



Daniel R. Elliott, III

Revised Standards for Preemption of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act

This agreement between UTL and the signatory Class I Carriers is intended to set forth standards to be applied by Class I railroads and the involved labor Organizations when the Carriers seek to override or modify Collective Bargaining Agreements in the implementation of consolidations, mergers, and acquisitions of control ("Major Transactions") pursuant to Section 11323 of the Interstate Commerce Act. This agreement does not apply when a Carrier is not seeking to override or modify Collective Bargaining Agreements in such circumstances.

Conditions

1. The procedures set forth herein will be prescribed by statute and not as a condition imposed and administered by the Surface Transportation Board, or any successor agency. The terms of this agreement will become null and void when enacted into law. However, pending enactment of such statutory language, the Class I railroads signatory to this agreement agree to be bound by its terms and conditions as they relate to any notices served pursuant to either protective conditions voluntarily reached by the parties or imposed by the Surface Transportation Board in the approval of a "Major Transaction" where the applicant Carriers are seeking to override or modify an existing Collective Bargaining Agreement.
2. The terms of this agreement when enacted in statutory form will not be subject to the current exemption provision in the Interstate Commerce Act, 49 U.S.C. Section 11321(a), or any future exemption provisions, and the parties will agree on appropriate statutory language to that effect. Until enactment of such statutory language, the Class I carriers signatory to this agreement agree that they will not assert such exemption authority.
3. Except as provided in paragraph 4 below, the procedures set forth in this agreement will apply to any notice for an implementing agreement by any carrier party that seeks to override or modify Collective Bargaining Agreements, whether under existing merger, control or acquisition authority or any such authority sought or granted in the future by the STB or any successor agency.
4. The procedures set forth herein do not apply to any implementing agreements established prior to the date of this Agreement as a consequence of voluntary negotiations or arbitration pursuant to protective conditions imposed by the ICC or STB. Such implementing agreements will be conclusive and continue in effect as to all issues resolved, including provisions for procedures to be used in subsequent consolidations, coordinations or transfers of work and/or employees. Such provisions, however, shall not be used to change any Collective Bargaining Agreement unless specifically provided therein. A list of implementing agreements containing provisions that provide for changes in Collective Bargaining Agreements is attached as Addendum A. If an implementing agreement is, by oversight, not listed in Addendum A, it will subsequently be added to the list, although the carrier has the burden of showing that such addition is appropriate.

EXHIBIT

A

5. This agreement only addresses the current authority of the STB to override or modify collective bargaining agreements in implementing issues for major transactions. This agreement is not intended to alter or change the substantive provisions of existing protective benefit agreements or in any way address or restrict the authority of the STB to impose protective conditions in major transactions.
6. The provisions of this agreement shall not deprive a Carrier of any right to take any action allowed under any applicable existing or future Collective Bargaining Agreements, nor shall the Organization be deprived of asserting that no such right exists, all subject to any dispute resolution mechanisms provided in such agreements or under the Railway Labor Act itself.
7. This agreement will not bar the parties, by mutual agreement, from addressing any matter contained in this agreement in an alternative manner.

Consolidation or Coordination

1. A Consolidation or Coordination is a change that unifies, consolidates, merges, or pools, in whole or in part, the facilities, equipment, or employees of two or more rail Carriers (or former rail carriers), or any of the operations or services performed by such Carriers. A Consolidation or Coordination does not include a "Transfer of Work".
2. Where the work embraced by a Consolidation or Coordination is subject to two or more Collective Bargaining Agreements, the Organization may choose (from among those two or more agreements) which Collective Bargaining Agreement will apply to the Consolidation or Coordination. If the union fails to select a single Collective Bargaining Agreement within the time frame for negotiations contained in the New York Dock conditions, the single agreement to apply shall be determined by the Arbitrator. In making such determination, the arbitrator shall choose the agreement most beneficial to the employees involved as to rates of pay, rules and working conditions, including crew consist agreements.
3. In situations where the Collective Bargaining Agreements chosen by two or more Organizations contain inconsistent provisions that would create inefficiencies in the operation, which did not exist previously, the Organizations involved shall coordinate their choices to eliminate such inconsistencies. If the involved Organizations fail to do so within the time frame for negotiations contained in the New York Dock conditions, the Arbitrator shall resolve such inconsistencies. In making such determination, the arbitrator shall choose the agreement most beneficial to the employees involved as to rates of pay, rules and working conditions, including crew consist agreements.
4. For purposes of determining compensation protection, an Organization's selection of a Collective Bargaining Agreement with lower wage rates shall not be treated as a decision by affected employees to "voluntarily" place themselves on lower rated positions.

5. The Collective Bargaining Agreement selected by the Organization or Arbitrator may only be modified as follows:
 - a) Work Jurisdiction Rules shall be subject to modification only to the extent that the selected agreement does not permit employees to perform work throughout the Consolidated or Coordinated territory.
 - b) Seniority District/Territory Boundaries shall be subject to modification as necessary to permit the Consolidation or Coordination. Such modification shall not, however, cause employees who were in service on the effective date of the Consolidation or Coordination to lose their seniority date on any territory where they previously held seniority and they shall be permitted to exercise such seniority. However, employees cannot be forced to a new location until they exhaust all seniority at their home location. Nothing in this agreement shall be deemed to change the obligations of an employee to exercise seniority for purposes of protective benefits.
 - c) Provisions relating to seniority of all employees involved in the Consolidation or Coordination shall be integrated by agreement between the involved Carrier(s) and Organization(s) with disputes to be resolved by the Arbitrator. Train Service Rosters and Engine Service Rosters shall not be consolidated with each other. [Applicable to Operating Crafts Only.]

Transfer of Work

1. A Transfer of Work is where work and/or positions (and/or employees) are transferred from one location to another.
2. In the case of a Transfer of Work, the Collective Bargaining Agreement applicable at the location to which the work, positions, and/or employees are to be transferred will apply to the transferred work, positions, and/or employees.
3. Provisions relating to seniority of employees who transfer to the new location in connection with a Transfer of Work shall be integrated by agreement between the involved Carrier(s) and Organization(s) with disputes to be resolved by the Arbitrator. Train Service Rosters and Engine Service Rosters shall not be consolidated with each other. [Applicable to Operating Crafts Only.]

System Wide Issues

The Parties recognize that terms of Collective Bargaining Agreements applicable to a portion of a Carrier's system may give rise to operating incompatibilities or may be inconsistent with the establishment of uniform system-wide administrative procedures. Accordingly, notwithstanding any

of the preceding provisions or conditions, where Collective Bargaining Agreements interfere with the Carriers' right to take the following actions, those agreements may be changed by the Carrier in the following limited circumstances:

1. to ensure a uniform payroll system, including uniform system-wide practices regarding dates for the payment of wages and/or direct deposit of paychecks;
2. to provide for uniform crew calling practices;
3. [other identified situations to be determined for each other involved craft.]

Dispute Procedures

All disputes are to be resolved in accordance with Section 4 of the New York Dock conditions.

Review Procedures

The award of an Arbitrator under this agreement shall be subject to review by the United States Court of Appeals for the District of Columbia under statutory provisions and standards applicable to review of agency adjudications.

Enforcement

This agreement is enforceable in any United States District Court in whose jurisdiction the involved Carrier operates.

Paul E. Smith
State Representative

3.

A. J. Miller
United States Congress

Mr. Flynn
United States House of Representatives

Kenneth L. Taylor
State Representative

James B. ...
State Representative

James A. Nixon
State Representative

Stewart
State Representative

DATED: FEBRUARY 11, 2000